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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA *ex rel.* STF,
LLC, an organization; STATE OF
CALIFORNIA; *ex rel.* STF, LLC, an
organization,

Plaintiffs,

v.

VIBRANT AMERICA, LLC, a Delaware limited
liability company,

Defendants.

CASE NO. 3:16-cv-02487-JCS

**JOINT STIPULATION AND ~~[PROPOSED]~~
ORDER RE: (1) TEMPORARY STAY OF
DISCOVERY, (2) SELECTION OF
MEDIATOR, (3) SELECTION OF
MEDIATION DATE**

Relator STF, LLC (“Relator”) and Defendant Vibrant America, LLC (“Vibrant”) respectfully submit this joint stipulation and [proposed] order (1) setting forth the agreed upon mechanics of a temporary stay of discovery, (2) identifying the mediator selected by the parties, and (3) identifying the mediation date.

Vibrant is in the business of serology. Historically, it has tested blood for the presence of molecules reflective of heart disease, allergies, and other ailments. But, in light of the spread of COVID-19, Vibrant has re-focused its business and will soon begin testing blood serum for the presence of coronavirus antibodies. To allow Vibrant the opportunity to increase its capacity to conduct these tests, the Relator has agreed to a temporary stay of discovery, subject to the following controls and conditions:

TEMPORARY STAY

1
2 1. Discovery will be temporarily stayed for 90 days beginning on the date this Joint Stipulation
3 and [Proposed] Order is signed by the Court (“Stay Order”). To show good cause in support of the stay,
4 Vibrant will file contemporaneously with this stipulation a declaration signed under penalty of perjury by the
5 Chief Operating Officer of Vibrant affirming that Vibrant’s refocus on COVID-19-related testing requires a
6 temporary discovery stay. Relator agrees that this stipulation establishes good cause meriting a temporary stay,
7 subject to these controls and conditions.

8 2. If at any time circumstances change that would impact the facts supporting good cause for a
9 stay (for example, if the lab does not receive required permitting, etc.), Vibrant agrees to notify Relator
10 immediately and both parties agree to renegotiate the temporary stay in good faith. The Relator reserves the
11 right to move the Court to lift the stay at that time. Vibrant reserves the right to seek a further stay.

12 3. Within 80 days of the date of the Stay Order, the parties will file a Joint Statement setting forth
13 their respective positions regarding the continued need for a stay. The parties will meet and confer before
14 filing the Joint Statement. If a continued stay is sought, Vibrant agrees to support good cause with a new
15 declaration signed and filed contemporaneously with the Joint Statement. In the event the parties disagree
16 about the continued need for a stay, Vibrant reserves the right to seek a stay and Relator reserves its right to
17 oppose.

18 4. If the Court orders an extension of the temporary stay of discovery, a new 90-day stay will take
19 effect on the date the order is signed by the Court, and the procedure outlined above will repeat.

20 5. The parties agree that the Rule 26 Initial Disclosures will be subject to the temporary stay.
21 Initial Disclosures will become due 30 days after the stay is lifted by order of the Court, or 30 days after the
22 temporary stay expires.

23 6. Notwithstanding the above provisions, the parties agree they will exchange the following
24 discovery within 30 days of the Stay Order:

- 25 a) Vibrant will produce to Relator all documents Vibrant produced to any government entity
26 related to any allegation in the Complaint, including all documents produced to the
27
28

Department of Health & Human Services pursuant to Subpoena Control No. 17959 and/or any other civil investigative demand or subpoena.

- b) Relator will produce to Vibrant all underlying documents Relator provided to the government as exhibits to the Relator's Statement, excluding any work product such as the Relator's written statement itself. Relator will also produce to Vibrant all documents sufficient to identify all of the member or members of STF, LLC.

MEDIATION

1. The parties agree to participate in private mediation on September 9, 2020.

2. The parties have exchanged lists of potential mediators, are continuing to discuss options, and will advise the Court of their selection on or before Friday, April 24, 2020.

SO STIPULATED.

Dated: April 17, 2020

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ Joseph M. Alioto Jr.

JUSTIN T. BERGER
JOSEPH M. ALIOTO JR.
MALLORY A. BARR
Attorneys for Relator

Dated: April 17, 2020

FOLEY & LARDNER LLP

By: /s/ Thomas S. Brown

THOMAS S. BROWN
Attorney for Defendant Vibrant America, Inc.

[PROPOSED] ORDER

On stipulation of the parties, and good cause appearing, IT IS HEREBY ORDERED that discovery is stayed for 90 days effective the date of this Order. In the event of any change of circumstance that impacts good cause in support of the stay, Vibrant shall immediately advise Relator and the parties shall meet and confer in good faith to discuss whether the stay should be lifted. Within 80 days of the date of this Order, the parties shall file a Joint Statement outlining their respective positions on the need to extend the stay. If an extension is agreed to by the parties or requested by Vibrant, Vibrant shall submit a declaration establishing good cause. In the event no Joint Statement is filed, or if Vibrant's request for extension is denied, the stay of discovery shall expire 90 days after the date of this Order. Initial Disclosures shall be suspended pending the stay and must be exchanged within 30 days of the stay being lifted or expiring.

IT IS FURTHER ORDERED that the following discovery is exempted from the stay:

Within 30 days of the date of this Order, Vibrant shall produce to Relator all documents Vibrant produced to any government entity related to any allegation in the Complaint, including all documents produced to the Department of Health & Human Services pursuant to Subpoena Control No. 17959 and/or any other civil investigative demand or subpoena.

Within 30 days of the date of this Order, Relator shall produce to Vibrant all underlying documents Relator provided to the government as exhibits to the Relator's Statement, excluding any work product such as the Relator's written statement itself. Relator shall also produce to Vibrant all documents sufficient to identify all of the member or members of STF, LLC.

IT IS FURTHER ORDERED that the parties shall participate in mediation on September 9, 2020.

IT IS SO ORDERED.

Dated: April 21, 2020



JOSEPH C. SPERO
Chief Magistrate Judge

FILER'S ATTESTATION

I, Joseph M. Alioto Jr., am the ECF user whose identification and password are being used to file this Joint Stipulation and Proposed Order re: (1) Temporary Stay of Discovery, (2) Selection of Mediator, (3) Selection of Mediation date. In compliance with L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this Stipulation has been obtained from each of the other signatories.

Dated: April 17, 2020

By: /s/ Joseph M. Alioto Jr.

JOSPEH M. ALIOTO JR.

Attorneys for Relator STF, LLC